of the county be final as against said county and be sufficient warrant for the payment of the compensation of such appointees or employes out of the general fund of the county whether the money necessary to pay said compensation has been appropriated by the county commissioners for this purpose or not.

As a consideration supporting the conclusion which I have reached on this question, it is pertinent to note that the provisions of Section 5548, General Code, requiring an appraisal of the real estate in the several counties of the state in the year 1925 and every six years thereafter, are mandatory. It was so held by the Supreme Court of this State in the case of *State, ex rel., Tax Commission of Ohio,* vs. *Faust, Auditor,* 113 O. S., 365. The question presented to the court in this case was with respect to the appraisal which was required to be made in the year 1925. Later, under date of July 23, 1930, this office, giving effect to the decision of the Supreme Court in the case of *State, ex rel., Tax Commission of Ohio,* vs. *Faust, Auditor,* supra, held in an opinion directed to the Prosecuting Attorney of Hamilton County, that "the duty imposed upon the county auditor by the provisions of Section 5548, General Code, as amended by the act of April 21, 1925, 111 O.L., 418, to assess for the purpose of taxation all the real estate situated in the county other than that owned by public utilities otherwise assessed every sixth year after the year 1925, is mandatory."

For this reason and on the other considerations herein discussed, my opinion on the questions presented in your communication is that above stated.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

585.

PUBLIC OFFICER—FALSE IMPRISONMENT—EXPENSE REIMBURSEMENT BY CITY.

SYLLABUS:

When a police officer of a city, in the discharge of his duty detains a person, is sued by such person for false imprisonment and on trial a verdict in his favor is returned by the jury, the city is under a moral obligation to reimburse such officer in the sum of $100.00 *expended by him for attorney fee and* $15.00 *for stenographic service in connection*

with such trial, where no question is raised as to the reasonableness of the charges.

COLUMBUS, OHIO, May 12, 1937.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.
GENTLEMEN:

I am in receipt of your communication of recent date as follows:

> "We are inclosing herewith letter from our Columbus Examiner to which is attached a copy of Ordinance No. 374-34, in which council has recognized as a moral oligation an amount necessary to reimburse a police officer for his costs in defending an action for damages arising out of alleged false imprisonment.
>
> Question. May such a claim be legally paid from the public funds of the City of Columbus, and if not, should finding for recovery be returned for the amount so paid?"

I likewise note your enclosure which contains a copy of Ordinance No. 374-34 of the City of Columbus, to which I merely refer.

The Ordinance gives a recital of fact to the effect that on or about July 16, 1932, George W. Donaldson, a police officer of the City of Columbus was sued by Arthur Robinson for damages for alleged false imprisonment. A trial was had at the April, 1934, term of the Court of Common Pleas of Franklin County, Ohio, wherein the jury returned a verdict in favor of the officer. By reason of such trial, Donaldson was out of pocket $100.00 attorney fee and $15.00 for stenographic service. It was ordained by the City Council, in effect, that Donaldson's attorney fee and bill of stenographic service in the aggregate sum of $115.00 be recognized as a moral obligation against the City of Columbus. It was further ordained that the same be paid from Miscellaneous No. 21-H Fund, from which fund the amount of $115.00 was appropriated for such purpose.

Inasmuch as you ask whether or not a finding should be made by your Bureau, I assume that such sum was paid to Donaldson. I further assume that Donaldson was in the performance of his duty when he detained Robinson—otherwise there would be no obligation on the part of the city.

Columbus is a municipal corporation. Municipal corporations, other than those operating under a charter, are creatures of statute with such power and such power only as is expressly delegated to them by the laws of the state together with such implied power as is necessary to carry the powers expressly delegated into effect.

The funds of a municipal corporation are produced by the levy of taxes in one form or another upon the property of inhabitants and the law is very particular as to the purposes for which such funds may be expended.

The state in the exercise of its sovereign power may recognize its moral obligations and make restitution therefor. The power of sovereignty is an inherent power. It comes to the state at the time of its creation, subject to all the constitutional limitations with which the people see fit to surround it. The people of Ohio have not seen fit to restrain the state by constitutional provision from recognizing and, in many instances, liquidating its moral obligations. Does it not follow as a logical conclusion that when the state delegates to the municipality the power and authority to incur and liquidate legal obligations, it impliedly empowers and authorizes such municipality to recognize and liquidate its moral obligations? If the municipality created, organized and operating under the statutory authority of the state may recognize and liquidate its moral obligations, there is much stronger reason why a charter city should have like power and authority. Our forbears recognized that the state to progress, and prosper should have a moral as well as a legal existence.

Article III of The Ordinance of '87 provides:

> Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

When we became a state this provision was carried into our Constitution and there it remains. Article I, Section 7 of The Constitution of Ohio provides in part, viz:

> "Religion, morality and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws, to protect every religious denomination in the peaceable enjoyment of its own mode of public worship and to encourage schools and the means of instruction."

In obedience to this command, the General Assembly has enacted numerous laws enjoining moral duty.

Columbus is a charter city. Its life-blood comes from the Constitution and not from the General Assembly. Article XVIII of the Constitution of Ohio provides:

> "Any municipality may frame and adopt or amend a charter

for its government and may, subject to the provisions of Section 3 of this article, exercise thereunder all powers of local self-government."

Article XVIII, Section 3 of the Constitution provides, viz:

"Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

Columbus being a charter city has power and authority to recognize and liquidate moral obligations unless such action is in conflict with general laws, and I am frank to say that I am unable to find such conflict.

This is the fourth time in recent years that this question, in one form or another, has been passed on by this office, namely, O. A. G. 1929, pages 915 and 1939 and O. A. G., 1930, pages 1524, et seq.

The question involved in the last opinion was whether or not the legislation providing for the liquidation of the moral obligation was sufficiently specific in the absence of a recital in such legislation that the legislative body recognized the claim as a moral obligation; however, the then Attorney General went farther and did hold that municipalities had such power, and I see no reason for disturbing that opinion. In that opinion it was held that the failure to denominate the claim in the legislation as a moral obligation in specific terms, did not contravene Section 4226, General Code and with such holding, I concur.

The words "moral obligation" standing alone amount to nothing more than a conclusion of fact, but when the legislation, as in the instant case contains a complete recital of facts from the consideration of which but one logical conclusion could be reached, namely, that the claim was a moral obligation in fact, it was not necessary to use the specific term "moral obligation" as it added nothing and took nothing away.

While possible, it is not likely that Donaldson would have been sued by Robinson for false imprisonment, had he not been a police officer of the City of Columbus. That Donaldson was in the right was established by the return of the verdict of the jury in his favor. It is an old saying that "He who pleads his own case usually has a fool for a client," so Donaldson employed a lawyer. That he exercised sound judgment in the selection of counsel is likewise borne out by the verdict of the jury. Donaldson's lawyer, whoever he may have been, evidently knew something of the uncertainty of the outcome of the case in the

trial court, so he took all necessary precaution and secured the services of a stenographer who doubtless took the case and prepared a transcript —as the case was tried the second time. Donaldson paid his lawyer $100.00 and his stenographer $15.00, and no question is raised—and I doubt if there could be—as to the reasonableness of the charges. Surely the City of Columbus was morally obligated to Donaldson to reimburse him for such expenditure. It did so. No law has been violated and no wrong has been done anyone.

In the last opinion of my predecessor, supra, the case of *Caldwell* vs. *Marvin,* 8 N. P. (N. S.) 387, is cited. I have examined this case. While it is a nisi prius opinion, it is well reasoned and can be followed with safety. In that case the employment of an attorney by a school board was invalid and it was sought to enjoin his payment. The court said in substance that the mere invalidity of the employment of the attorney was so far overcome by equity inuring to the benefit of the public, that a court of equity would not interfere with the payment of a moral obligation thus incurred by enjoining its satisfaction out of the public treasury. Donaldson was serving the public when he imprisoned Robinson. The jury said he was properly and lawfully serving the public, but to demonstrate the fact to the public's satisfaction, he was obliged to expend $115.00 of his own funds. Surely no court of equity would have enjoined his reimbursement under such circumstances. In the same opinion the question was raised as to whether or not the legislation providing for the payment of the attorney fee in question in that case contravened Sections 28 and 29 of Article II of the Constitution of Ohio in that it was retroactive . To refute that contention the case of *Burgett, et al* vs. *Norris, Treasurer,* 25 O. S. 309 was cited, which held:

> "The power of the legislature to pass curative statutes retrospective in their nature, which do not impair contracts nor disturb vested rights is not inhibited by Section 28, Article II of the Constitution."

I am of the opinion that the legislation involved in the instant case was in perfect harmony with Section 28, Article II and did not violate Section 29, Article II of the Constitution. I specifically affirm in every respect Opinion No. 2398, pages 1524, Vol 2, O. A. G. (1930). This is done in the hope that these questions involving the recognition and liquidation of moral obligations by municipalities may be definitely settled.

In my opinion the claim herein involved was legally paid from the

public funds of the City of Columbus and that no finding for the return of such money to the city treasury is authorized by law.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

586.

APPROVAL—ORDER REDUCING RENT TO BE PAID BY HUGH M. EATON OF AKRON, OHIO.

COLUMBUS, OHIO, May 12, 1937.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus. Ohio.*

DEAR SIR: You have submitted for my examination and approval a finding recently made by you with respect to the rental to be paid one Hugh M. Eaton of Akron, Ohio, on O. & E. Lease No. 850 held by said lessee on certain Ohio and Erie Canal lands in said city.

It appears from information at hand that two years ago the Director of Public Works, acting under the authority of House Bill No. 467, 115 O. L., 512, made a finding and order reducing the annual rental to be paid under this lease from the amount therein provided for to the sum of $764.40. A year or more ago you, acting as Director of Public Works, under the authority of the act of the legislature above referred to made a finding and order continuing in effect the order previously made by your department reducing the annual rental to be paid under this lease, with the result that the annual rental paid under this lease for the year May 1, 1936, to May 1, 1937, was said sum of $764.40.

By the finding here in question which has been presented for my consideration, the previous finding and order of the department reducing the amount of rental to be paid under this lease is continued for another year, to wit, from May 1, 1937, to May 1, 1938. In other words, the rental to be paid by said lessee under this lease for the current year will be said sum of $764.40 instead of the amount of rental provided for by the terms of the lease.

I assume that there were and are special reasons and circumstances which in your judgment justified the continuance for another year of the previous order made by your department reducing the annual rental to be paid under this lease. No facts are apparent which would justify me in disapproving your finding and for this reason the same is approved